IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Criminal Application No.3205 of 2006
In
Criminal Appeal No.550 of 2005

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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Mr. N.A. Badar, Advocate for the Appellant.
Mrs. K.S. Joshi, APP for the Respondent/State

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CORAM : K. J. ROHEE & C. L. PANGARKAR, JJ
DATED : NOVEMBER 21, 2006

1. Heard the learned counsel for the parties.

2. The appellant has been convicted for the offence punishable under Section 302 of IPC for having committed murder of his wife Maina.

3. It is alleged that the marriage between the appellant and Maina took place on 4.4.2004. After marriage they were residing together. On 19.5.2004 at 5 a.m. Maina was burnt. She was admitted to the hospital at Khamgaon where PW6 (the Naib Tahsildar and the Executive Magistrate) recorded her first dying declaration (Exh.23) in presence of the Medical Officer. It is alleged that thereafter oral dying declarations were also made by Maina before her father and mother. Maina succumbed to the burn injuries on 21.5.2004.

4. Two points were urged by the learned counsel

for the appellant. Firstly it was submitted that in the written dying declaration (Exh.23) in the latter part Maina fully exonerated the appellant by stating that she has no grievance whatsoever against the members of her family. In this respect, the learned counsel for the appellant submitted that the written dying declaration has to be accepted or rejected as a whole and it is impermissible to pick and choose pieces from the dying declaration. In this respect, he invited our attention to the observations in **Md. Rafiq Md. Tajoddin .vs. State of Maharashtra – 2005 ALL MR (Cri) 972** wherein it is observed that the dying declaration should be accepted in its entirety and it is impermissible to pick and choose pieces from the dying declaration. It is further observed that in the event of inter se discrepancies in the dying declarations, it is extremely unsafe to accept any one as a truthful narration, particularly in the absence of any other evidence which would render a particular version as a truthful version.

5. In the present case the earlier part of the dying declaration (Exh.23) points out to the guilt of the appellant. A bare perusal of Exh.23 shows that it was fully completed. The latter portion exonerating the appellant was added on the rear portion of the said paper. Neither thumb mark of Maina was obtained thereunder nor certificate from the Medical Officer was obtained. It is thus clear that the portion on the rear part of the paper was added subsequently. As such there is no question of picking and choosing pieces from the dying declaration.

6. Secondly the oral dying declarations made by Maina before her father and mother fully corroborate the version of the prosecution that it was the appellant who set Maina on fire. The trial Court has observed that even the appellant has not stated in his statement under Section 313 Cr. P. C. that Maina suffered burn injuries while cooking. In view of these circumstances, we are not inclined to suspend the sentence of imprisonment and to release the appellant on bail. The application is, therefore, rejected.

JUDGE **JUDGE**

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